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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,581	03/15/2002	Frank Andrej Kvietok	8885	3231

27752 7590 06/29/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/098,581

Applicant(s)

KVIETOK ET AL.

Examiner

Leigh McKane

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>061102, 110703</u> | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-7, 9, 10, 12-17, 19, 20, 22-24, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Huffman et al (U.S. 5,887,118).

Huffman et al teaches a method of using an article 10 comprising a mechanism 14 that is capable of communicating information with a device 16, the device being of a type that enables the release of a volatile, scented material 20, 22. See Figure 1. The mechanism is both capable of transmitting and receiving information from a device by an electrical contact (bus) capable of being read by the card interface of the device. The information transmitted includes a name associated with one or more volatile materials and a volatile material-specific release parameter (time). See col.3, lines 50-53 and col.5, lines 37-41. The information may be stored in the storage medium 32. The article 10 may be used with a PC or laptop. The article can contain information to enable the independent release of each volatile (separate emission programs and parameters). The article can operate in many types of modes: timed emission, sequential emission relating to the pages of an electronic document, and emission based upon pattern matching.

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3. Claims 1-3, 5, 8, 16, 18, 21, 25, 26, and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by Chiao (U.S. 6,654,664).

Chiao teaches an article 100 comprising a volatile material 150 and a mechanism 110 that is capable of communication information to a device 350 for release of the volatile material (a scent). The article stores information such as a timeline of scent duration and intensity (scent history and sequence). See col.11, lines 16-23. Chiao further discloses that the user may edit the programs by adding/deleting scents, overlapping scents, increasing the duration of scents, and decreasing the duration of scents. See col.1, lines 37-42.

4. Claim 11 is rejected under 35 U.S.C. 102(e) as being anticipated by Boyd et al (U.S. 6,737,025).

Boyd et al teaches an article 10 using passive sequential resistors to emit a scent from scent channels when used with device 22. Each time the article is used, a resistor 72 heats up and vaporizes. Thus, each time the device is used the number of resistors 72 is reduced.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiao.
8. As set forth above, Chiao discloses permitting the user to alter the emission of scents from the device -- the user may edit the programs by adding/deleting scents, overlapping scents, increasing the duration of scents, and decreasing the duration of scents. See col.5, lines 44-49 and col.11, lines 37-42. Chiao further teaches that the predetermined scent is "positioned directly above and/or in from of the movable heating element 430 by a controlled motor 440). See col.11, lines 61-65. Since Chiao clearly teaches the control of scent intensity (col.13, lines 49-57) and as scent emission is achieved through heating of the scent source, it is deemed obvious to control the amount of heat reaching the scent source by using the motor to control the relative positions of the heating element and the scent source, thus altering the amount of energy received by the scent source.

Conclusion


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leanheart et al (U.S. 6,669,092) teaches an article 96 communicating with a device 38 for scent emission. See Figure 4.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (6:30 am-4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leigh McKane
Primary Examiner
Art Unit 1744

elm
27 June 2005